TABLE OF CASES AND AUTHORITIES CITED

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In the Supreme Court of the United States

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLPHUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER, THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT INSURANCE CARRIER.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Arizona, entered on June 28, 1955, petition for rehearing denied October 4, 1955.

OPINION BELOW

The opinion below (Appendix, *infra*, pp. 13 to 38) is reported at 286 P. (2d) 214. The order denying rehearing is contained in Appendix, p. 39. The Industrial Commission order under review is contained at Appendix, *infra*, p. 11.

JURISDICTION

The judgment of the Court below was entered June 28, 1955, Appendix, p. 13, *infra*; rehearing denied October 4, 1955, Appendix, *infra*, p. 39. The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1257(3).

QUESTION PRESENTED

Whether a state workmen's compensation law may be applied by the state of injury to a motor carrier operator engaged exclusively in interstate commerce where (a) the operator lives in, (b) made his contract of employment in, and (c) is covered by the workmen's compensation act of another state?

STATUTE AND CONSTITUTIONAL PROVISION INVOLVED

In addition to the federal commerce clause, the applicable provision of law is the Arizona Workmen's Compensation Act, sec. 56-928 (a), Arizona Code Annotated, 1952 Supp.:

> "Employers subject to the provisions of this article are . . . every person who has in his employ three [3] or more workmen or operatives regularly employed . . . . For the purposes of this section 'regularly employed' includes all employments, whether continuous throughout the year, or for only a portion of the year, in the usual trade, business, profession, or occupation of an employer."

STATEMENT

I. Facts

The facts are fairly stated in the opinion of the Court below. Deceased was a bus driver employed by the Company respondent, a Nebraska corporation, in 1944, at El Paso, Texas. At the time of his death, he was regularly driving a route between Los Angeles, California, where he lived with his now widow and orphan, and Phoenix, Arizona. The Company was engaged exclusively in interstate commerce. The driver spent approximately 40% of his working time in Arizona, Appendix p. 17, *infra*.

Collins was killed as the result of a bus tire blow-out at Ehrenburg, Arizona. He was covered by the California Workmen's Compensation Act. However the extremely large disparity between the allowance of the California and Arizona systems (estimated by the dissenting Judge below as $70,000, Appendix, p. 26) obviously induced the widow and infant to apply for an award in Arizona.

The Industrial Commission of Arizona, feeling itself bound by the decision of the Arizona Supreme Court in *Industrial Commission v. Watson Bros. Transp. Co., Inc.*, 75 Ariz. 357, 256 P.(2d), 730 (1953), declared itself to be without jurisdiction. (Appendix p. 11, *infra.*) The Arizona statute, quoted above, covers only those "regularly employed" in Arizona, and the *Watson Bros.* case construed that phrase (as stated by the Arizona Court in the instant case) to bar any employee from coverage in Arizona who (a) made his contract of employment elsewhere, and (b) worked in states other than Arizona, regardless of whether he was engaged exclusively in interstate commerce or not.

II. The Proceedings Below; the Decision of a Federal Question

The widow and orphan, by appropriate Arizona procedure, brought the matter to the Arizona Supreme Court, which divided three ways:

1. The opinion of the Court disavowed the *Watson Bros.* rule, held that Collins was "regularly employed" in Arizona, and affirmed the want of jurisdiction in the Industrial Commission solely on the ground that the statute, if interpreted to cover the case, would violate the Commerce Clause. Appendix, p. 13, *infra.*

2. One Justice concurred on the grounds of the *Watson Bros.* case, thus as to himself raising no federal question. Appendix, p. 25, *infra.*

3. One Judge dissented on the ground that the statute as interpreted to cover the case, would not place an undue burden on commerce. Appendix, p. 25, *infra.*

The opinion of the Court below may be summarized as follows: First, it holds that the Arizona act covers persons injured in the state, regardless of whether "an employer requires his employees to divide their work between two states, and to the extent [the *Watson Bros.* opinion] indicates otherwise, it is repudiated." Appendix, p. 18, *infra.*

The Court then raised the controlling question: "Whether the Commerce Clause, United States Constitution, Article I, Section 8, makes inapplicable our workmen's compensation laws for the reason that decedent was engaged in interstate commerce when killed in Arizona, and was covered under the workmen's compensation laws of California." Appendix, p. 18, *infra*.

The Court concluded that the Commerce Clause did so preclude the operation of the Arizona Act, holding that the effect of coverage would be to compel employers to insure twice: "The threat of liability would require duplicate premiums and it is this duplication which creates the undue burden on Interstate Commerce." Appendix, p. 20, *infra*. It is the double coverage, said the Court, "which is prohibited under our interpretation of the Commerce Clause." Appendix, p. 21, *infra*. In so holding, the Court considered itself to be following the requirements of *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945).

The Court below recognized that it could not control the making of an allowance by another state but concluded, "our inability to control other states does not justify our ignoring the consequences of our internal laws which substantially affect interstate commerce; the commerce clause would otherwise be meaningless." Appendix, p. 24, *infra*.

Petitioners, relying heavily on the dissenting view, would incorporate it by reference here. Appendix, p. 25. Suffice it to say that the dissent contends that the federal Constitution in no way precludes coverage of the deceased.

As has been noted, a petition for rehearing, based exclusively on the federal question and contained in the record on file with the Clerk of this Court, was duly filed; was opposed on the ground that the matter had been covered; and was denied.

REASONS FOR GRANTING THE WRIT

1. As a preliminary, it may be noted that a federal question was decided, and is open to review here. Where a state statute is

interpreted in a particular manner because the state court felt constrained to conclude as it did because of the Federal Constitution and this court's prior adjudications of Constitutional immunity," this Court may review. *State Tax Comm. v. Van Cott*, 306 U.S. 511, 514 (1939); and see *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437, 443 (1952). Such a procedure is particularly appropriate here, where the opinion of the Arizona Court reveals full realization of the justice of permitting the state of the accident to allow compensation, and is clearly restrained from doing so only by what were thought to be the demands of this Court.

2. The question is substantial. The resources of this place do not permit a technically competent quantitative analysis of the number of truckers and bus drivers who may be involved the country over in purely interstate employment under statutes which might be open to a construction of coverage in similar circumstances, but the number is almost obviously large, and the problem is clearly recurrent. One way or another, related aspects of the problem have troubled many courts; cf. the Ohio opinion largely agreeing with the decision below, *Spohn v. Industrial Comm.*, 138 Ohio St. 42, 32 N.E.(2d) 554 (1941), sharply limited in *Holly v. Indus. Comm.*, 142 Ohio St. 79, 15 N.E.(2d) 152 (1943). Cf. the New York approach, largely one of brushing the problem aside as unimportant without considering precisely whether interstate commerce was exclusively involved, *Ettors v. Railway of New England*, 266 App. Div. 929, 43 N.Y.S.2d 884 (1943); *Ahearn v. United Van Lines, Inc.*, 265 App. Div. 898, 37 N.Y.S. 2d 991 (1942). The State of Washington, on the other hand, has avoided the problem by abnormally tight statutory construction, cf. *McClung v. Prati*, 270 P. (2d) 1063 (Wash., 1954).

The result is that the family here involved would, on identical facts, be treated as barred by the federal Constitution from protection in Arizona, be covered in New York, be on most uncertain intermediate ground in Ohio, and be subject to extremely tight statutory limitations in Washington. The same problem can rise